

District Of Columbia Circuit Court Dismisses Original Insured's Claims Against Reinsurers And Intermediaries (Insurance Law Alert)

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The District of Columbia Circuit Court ruled that reinsurers and reinsurance intermediaries were not directly liable to the original insured. *Vantage Commodities Financial Services I, LLC v. Assured Risk Transfer PCC, LLC*, 2022 WL 1193996 (D.C. Cir. Apr. 22, 2022).

Vantage entered into a loan agreement extending credit to an energy company. In order to mitigate the risk of loan default, Vantage hired Equifin Risk Solutions to create Assured Risk Transfer (“ART”), a special purpose “captive” insurance entity backed by reinsurance. In turn, Equifin retained Willis Towers to assist in the management of ART. Equifin secured reinsurance from several carriers to reinsure ART for a portion of insurance issued to Vantage. When the energy company defaulted on the loan, Vantage submitted a claim to ART. ART disputed the claim and an arbitration panel ultimately found in Vantage’s favor. ART had insufficient funds to pay the arbitration award. The reinsurers notified ART that any future claims would be denied because ART had failed to comply with certain notice and proof of loss requirements in the reinsurance agreements. Thereafter, Vantage sued ART, the reinsurers and Willis Towers, alleging negligence, breach of contract, promissory estoppel, unjust enrichment and professional negligence. The district court dismissed the suit and the appellate court affirmed.

The appellate court held that as to the claims against the reinsurers, Vantage failed to plead facts sufficient to establish a direct contractual relationship. The court acknowledged that in certain circumstances, a reinsurer may become directly liable to the original insured, but concluded this case did not present such a scenario. In particular, the court held that there was no implied contract because Vantage never dealt directly with the reinsurers. Similarly, the promissory estoppel and unjust enrichment claims failed because both depended on the existence of an agency relationship between the reinsurers and either ART or Willis Towers, which was not established by the allegations or factual record.

With respect to the professional negligence claims against Willis Towers, the court held that the “economic loss doctrine” bars such claims where, as here, the claimant seeks to recover purely economic losses. The court rejected Vantage’s assertion that there was a “special relationship” between the parties that would create an exception to the economic loss doctrine. The court noted that Willis Towers had minimal contact with Vantage, “nothing approaching the ‘close’ or ‘intimate’ nexus” needed to trigger the exception. The court also ruled that the negligent misrepresentation claims were without merit, citing the lack of false representations or reasonable reliance.

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